

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

MICHAEL ANTHONY DAVIS,  
(BOP # 33896-177)

VS.

NFN COLMAN, et al.

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CIVIL NO.4:13-CV-156-Y(BJ)

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

In this case, inmate plaintiff Michael Anthony Davis filed another new civil case with a motion for leave to proceed *in forma pauperis* on appeal. Resolution of the motion was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b). The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

This case is a new civil action.

B. PARTIES

Michael Anthony Davis is the plaintiff. The individually named defendants are officials at Davis's former institution of confinement.

C. LEGAL ANALYSIS

This civil action was initiated by the filing of a civil complaint by Bureau of Prisons ("BOP") inmate Michael Anthony Davis (register # 33896-177). Although Plaintiff Davis has filed a motion for leave to proceed *in forma pauperis*, Court records reveal, that,

as a result of previously filing frivolous suits, he is barred from proceeding under 28 U.S.C. § 1915 in any civil action or appeal filed while he is incarcerated or detained unless he is under imminent danger of serious physical injury.<sup>1</sup> Davis obtained the qualifying dismissals in the United States Court of Appeals for the Tenth Circuit, in the United States District Court for the Western District of Oklahoma, and in this the United States District Court for the Northern District of Texas.<sup>2</sup> In this case, Davis has not set forth grounds for leave to file in compliance with 28 U.S.C. § 1915(g). Thus, the undersigned finds that he is not entitled to proceed *in forma pauperis* in this action and, if he wishes to proceed with this suit, he must pay a full filing fee.

#### RECOMMENDATION

It is therefore RECOMMENDED that Michael Anthony Davis (BOP No. 33896-177) should not be allowed to proceed in forma pauperis in this action and that the motion to proceed in forma pauperis be DENIED by the district judge. It is further RECOMMENDED that the

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<sup>1</sup> As a result of the Prison Litigation Reform Act (PLRA) amendments to 28 U.S.C. 1915, section 1915(g) provides that a prisoner may not proceed in forma pauperis in a civil action if, on three or more occasions, the prisoner had a case dismissed as frivolous, malicious, or for failure to state a claim, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C.A. § 1915(g) (West 2006).

<sup>2</sup> See *Davis v. Collins, et al.* No. 4:12-CV-092-Y (N.D.Tex. March 1, 2012) (unpublished), appeal dismissed No. 12-10303 (5<sup>th</sup> Cir December 19, 2012); *Davis v. United States of America*, No. 4:11-CV-064-Y (N.D.Tex. July 6, 2011) (unpublished); *Davis v. United States of America*, No. 5:10-CV-1136-HE, 2011 WL 693639 at \*1 (W.D. OK. Feb. 18, 2011) (unpublished); and *Davis v. United States*, 426 Fed. Appx. 648, No.11-6072, 2011 WL 2321453 at \*1 (10<sup>th</sup> Cir. June 14, 2011).

district judge inform plaintiff Davis that his complaint will be subject to dismissal without further notice under Federal Rule of Civil Procedure 41(b), unless Plaintiff pays to the clerk of Court the full filing fee of \$350.00 within ten (10) days after the district judge's order.

NOTICE OF RIGHT TO OBJECT TO PROPOSED  
FINDINGS, CONCLUSIONS AND RECOMMENDATION  
AND CONSEQUENCES OF FAILURE TO OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 10 days after being served with a copy. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court is extending the deadline within which to file specific written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation until March 22, 2013. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest

injustice, from attacking on appeal any such proposed factual finding and legal conclusion if it has been accepted by the United States District Judge. See *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is ORDERED that Plaintiff is granted until March 22, 201~~3~~ to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation.

It is further ORDERED that the above-styled and numbered action, previously referred to the United States Magistrate Judge, be and is hereby, returned to the docket of the United States District Judge.

SIGNED March 1, 2013.



JEFFREY L. CURETON  
UNITED STATES MAGISTRATE JUDGE